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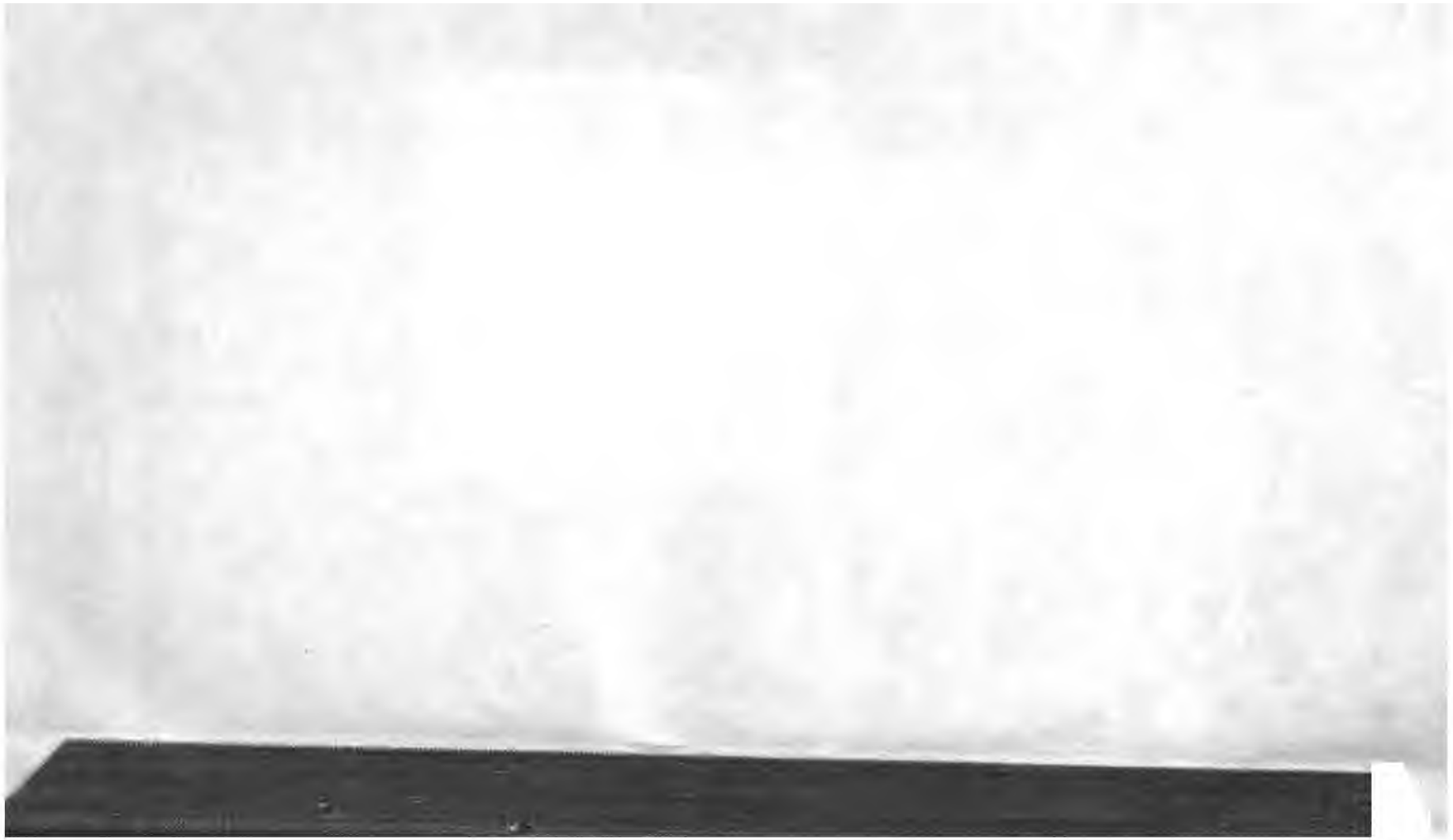

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AMERICAN HISTORICAL ASSOCIATION.

THE HISTORICAL SIGNIFICANCE OF THE MISSOURI COMPROMISE.

BY

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Professor of American History, Indiana State University.

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THE HISTORICAL SIGNIFICANCE OF THE MISSOURI COMPROMISE.

By JAMES ALBERT WOODBURN.

The struggle for the restriction of African slavery in the United States is the central theme in American political history during the nineteenth century. That struggle suggests to the student of American politics a long series of contests culminating at last in one of the greatest civil wars in human history.

For more than a generation all other subjects in our Congressional history had sunk into a place of secondary or temporary importance; this, amid events of varying moment, held first rank until it passed for settlement from the forum to the field.

The struggle over the admission of Missouri into the Union (1818–1821), involves the merits of the whole controversy. The immediate result of that struggle was the admission of Missouri without restriction, accompanied with the provision that slavery should be forever excluded from all the Louisiana purchase north of 36° 30′, the southern boundary of Missouri. In these few words is stated the substance of the Missouri compromise—the basis of adjustment of one of our most violent political struggles, the outcome of one of the ablest, the most prolonged and startling debates in the annals of the American Congress.

In attempting to interpret the significance of that struggle and to estimate the principles which it involved, it is first essential to have, if possible, a candid recital of the facts.

Preliminary to this recital, the true story of the struggle requires a brief mention of the principal ways in which the slavery question touched our history from 1789 to 1820.

Congress very early found it necessary to define its Constitutional powers affecting slavery. This was done March 23, 1790. An address in the shape of a memorial or petition had been presented to Congress on February 11, 1790, from the

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Quaker Yearly Meeting in Pennsylvania, against the continuance of the African slave trade and praying Congress "to remove that reproach from the land." The motion to send this memorial to a committee for a report gave rise to an animated debate of considerable length on the merits of slavery and on the competency of Congress to consider such a subject. Congress resolved upon the report of the committee to which the memorial was referred, in substance, as follows:

1. That the General Government was prohibited from interfering with the slave trade for the domestic supply until 1808. Congress might lay a tax of $10 on the importation.

2. That Congress had no power to interfere with slavery in the States, either to emancipate or to regulate the treatment of slaves. It remains alone with the several States to regulate their internal and domestic institutions.

3. That Congress could prevent the slave trade for foreign supply.

This assertion of the extent of the Constitutional power of Congress over slavery was universally accepted. There is no evidence that any considerable body of public opinion ever denied the correctness of this interpretation. Dr. Franklin, the president of the Pennsylvania Society for the Abolition of Slavery, who was said to be the author of this memorial, acquiesced in the decision and did not repeat the application.* The Liberty Party men of 1844, and the Free Soilers of 1848 and 1852, never materially denied these propositions.

By the enactment of the fugitive slave law of 1793 Congress proceeded to carry into effect the fugitive slave clause of the Constitution. No considerable voice of opposition was raised to this enactment. This law passed the Senate by a unanimous vote and the House by a vote of 48 to 7. Two of its clauses related to fugitives from justice and two to fugitives from labor, and it seemed to be taken for granted that one set of refugees should be returned as well as the other.

In the cession of their western territory to the General Government, North Carolina, in 1789, and Georgia, in 1802, stipulated that slavery should not be prohibited therein. It seems to have been agreed, after the restriction in the Northwest by the Ordinance of 1787, that the lands south of the Ohio should follow the condition of the States which ceded it. The Gen-

*Benton's Abridgments, Vol. I, p. 239.

eral Government accepted the Southwestern Territory without objection to this condition of its cession.

In 1790 the treaty-making power was used with the Creek Indians to bind them to deliver up the slaves fled from Georgia. This brought the national power to the support of slavery. The right to do this existed, but it is not evident that it was the duty of the central Government to do so.

In 1802 a convention at Vincennes, Ind., over which William Henry Harrison presided, attempted to secure the repeal of the antislavery restriction in the Ordinance of 1787. The memorial which this convention sent to Congress was considered and its prayer rejected. Subsequent attempts in this direction were defeated, and Indiana, in 1816, came into the Union as a free State.

By the Louisiana treaty with France, in 1803, the people living in that Territory under French law were guaranteed all the rights of person and property which they were enjoying at the transfer. The third article of the Louisiana treaty provided,—

> That the inhabitants of the Territory shall be incorporated in the United States and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.

The right to their "property" included the right to their slaves, and it may be said that Louisiana came to us as slave territory. Louisiana was admitted to the Union in 1812, in harmony with this treaty. In the admission no discussion appears on the subject of slavery. The later proposed restriction on Missouri and Arkansas, parts of the original Louisiana purchase, appeared to the inhabitants of those Territories as an abolition of slavery, not as a restriction. Slavery had been legal in those Territories by the French law of Louisiana.

As to the slave trade, we prohibited it to carriers of other countries in 1794; we outlawed it entirely in 1807, the earliest possible constitutional date; in 1815 we united with England in the treaty of Ghent in agreement to suppress it; and in 1820 we declared the trade to be piracy.

Slavery existed in the District of Columbia, as it did in Missouri and Arkansas, because of the inertia of the Federal Government. Slavery existed in Maryland and Virginia, the States which ceded this territory; the District was contiguous

to these States, and the inference was that it should be let alone. On February 27, 1801, Congress declared the laws of Virginia and Maryland in force in the District, and henceforth slavery existed there by virtue of this law.

During the first two decades of this century there seems to have been but little probability that slavery would be abolished in the States which had not already made arrangement for emancipation. The tendency seems to have set in the other way. Washington had noticed, a few years before his death, the subsidence of the abolition spirit, and he had "despaired of seeing the spirit of freedom gain the upper hand." From the formation of the Union until the application of Maine, in the midst of the Missouri struggle, no free State had offered herself for statehood except from territory in which slavery had been prohibited by Federal authority. The preservation of the political equilibrium between the slave States and the free had already become a matter of the first importance. The steadiness with which this balance was preserved has, by students of to-day, been very generally observed. In 1789 the States were as follows:

Slave.—Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia—6.

Free.—New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania—7.

There were seven free States—or States soon sure to be free—and six slave States. Between 1789 and 1820 States were admitted as follows:

Slave.—1792, Kentucky; 1796, Tennessee; 1812, Louisiana; 1817, Mississippi; 1819, Alabama.

Free.—1791, Vermont; 1803, Ohio; 1816, Indiana; 1818, Illinois.

The slave States had gained one from the start; with the assurance of Alabama's admission, the balance would be struck, in numbers 11 to 11. It was in this distribution of political power between the sections as represented in the United States Senate that the struggle over Missouri arose.

We come now to the progress of the events in that struggle.

THE FIRST MISSOURI STRUGGLE.

The Fifteenth Congress assembled at Washington, December 1, 1817. Henry Clay was chosen as Speaker of the House. John Scott appeared as the delegate from the Missouri Terri-

tory. On March 16, 1818, Mr. Scott, the delegate from Missouri, presented a petition from Missouri praying for statehood, which together with former similar petitions was referred to a select committee.* On April 18, 1818, Mr. Scott, chairman of this committee, reported to the House a bill, an enabling act, to authorize Missouri Territory to form a constitution and State government and for the admission of the State into the Union on an equal footing with the other States. The bill was read twice and referred to the Committee of the Whole, where it slept for the remainder of the session.

The same Congress met again in second session, November 16, 1818. On December 18, 1818, the Speaker presented a memorial from the territorial legislature of Missouri again praying to be permitted to form a constitution and State government preparatory for admission. The memorial was referred. On Saturday, February 13, 1819, the House, on motion of Mr. Scott of Missouri, went into Committee of the Whole on the enabling acts for Missouri and Alabama. The Missouri bill was taken up first and Mr. James Tallmadge, jr., a representative from New York, offered the following amendment, which will be hereafter known in this discussion as the Tallmadge amendment:

Provided, That the further introduction of slavery or involuntary servitude be prohibited, except for the punishment of crimes whereof the party shall have been duly convicted; and that all children born within the said State after the admission thereof into the Union shall be free, but may be held to service until the age of twenty-five years.†

It is to be noticed that there were two distinct parts to this amendment:

(1) Provision against the further introduction of slaves.

(2) Provision for gradual emancipation of the slaves already there.

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* At the same time Scott presented a petition from the inhabitants of the southern part of Missouri praying for a division of the Territory.

† In Seaton's Annals of Congress the last clause of this amendment reads: "That all children born within the said State, after the admission thereof into the Union, shall be free at the age of twenty-five years." This statement is not so carefully guarded and does not protect from slavery the children of prospective freedmen who might be born to these before the age of twenty-five. The amendment as given in the text is taken from Greeley's Text-Book of 1860, p. 55, and is, no doubt, the correct legal expression of the amendment.

Neither of these was a radical proposition. Neither proposed to interfere with the rights of property in that Territory.

"The motion of Tallmadge," says the Annals, "gave rise to an interesting and pretty wide debate." The discussion continued during February 13 and 15 in Committee of the Whole, and on the 16th in the House; and on the 17th the House passed the bill with the Tallmadge amendment. The vote stood 87 to 76, one from the slave States favoring restriction and ten from the free States opposing restriction. It was clearly a sectional vote.

The House bill for Missouri reached the Senate February 17, 1819. It was read twice and referred to the Committee on the Memorial from Alabama. On February 21, Senator Tait, of Georgia, chairman of this committee, reported the bill back to the Senate with an amendment striking out restriction. On February 27 the bill "was again resumed," and various motions gave rise to a long and animated debate.* This debate the record does not report. The Senate, however, struck out the Tallmadge amendment, the latter clause which provided for gradual emancipation, by a vote of 31 to 7; the first clause which prohibited further introduction of slavery by a vote of 22 to 16, and on March 2, 1819, the amended bill passed the Senate.

On the return of the bill to the House, March 2, Tallmadge moved the indefinite postponement of the bill, a motion which was barely lost, and which would probably have been carried but for absentees. The House then refused to concur in the Senate amendments, and the bill was returned to the Senate with a message of nonconcurrence. A message came back immediately that the Senate still adhered to its amendment, and thereupon, by motion of Mr. Taylor, of New York, the House voted to adhere to its disagreement, and the bill was lost with the Fifteenth Congress in deadlock. This was the end of the first struggle.

Incidental to this stage of the discussion it is, however, important to notice that the struggle for restriction in the Fifteenth Congress was not confined, in the minds of the restrictionists, to the question of the admission of the new State of Missouri. The southern portion of that Territory was cut off from the proposed new State and organized as the Territory of Arkansas. During the consideration of the bill to provide

* Seaton's Annals of Congress.

a Territorial government for the Arkansas country, Mr. Taylor, of New York, moved an amendment containing the substance of the Tallmadge amendment to the Missouri bill—to prohibit the existence of slavery in the new Territory. "This motion," says the Annals, "gave rise to a wide and long-continued debate, covering part of the ground previously occupied on this subject, but differing in part, as the proposition for Arkansas was to impose a condition on a Territorial government instead of, as in the former case, to enjoin the adoption of the (prohibitive) principle in the constitution of a State." This distinction is important, in view of the fact that the chief argument against restriction on Missouri was based on the sovereignty and equality of the States. The fact of the discussion over Arkansas is important as indicating the temper of the lower House, and that the prime motive, the uppermost desire, of those who wished to impose conditions upon Missouri, was to limit the area of human slavery. The House first adopted one clause of the Taylor amendment, that providing for gradual emancipation in Arkansas, but by the casting vote of the Speaker, Mr. Clay, the bill was recommitted, and in the final decision the House determined by a majority of two votes to strike out all the antislavery restriction on the Territory of Arkansas. Territorial restriction failed only because of complication with the Missouri question. Thus, we see, the Fifteenth Congress expired with the House refusing to admit Missouri without restriction, the Senate refusing to admit her with restriction.

The fact that the Fifteenth Congress left Missouri without authority to organize as a State was the occasion of great excitement among the people of that Territory, and from the adjournment of the Fifteenth Congress to the assembling of the Sixteenth the whole Union was agitated. The legislatures of the States passed resolutions in favor of and against restriction, according to their respective sections, sending copies of these to one another and to the General Government;* popular assemblies in all parts of the country debated the question, adopted resolutions, petitioned Congress, and appealed to the public sentiment of the country in whatever demonstration they could use for their cause; the press kept up a continual agitation and a multitude of pamphleteers entered the field,

* See Niles Register, Vol. 17, p. 342.

adding to the momentum and excitement of the great national argument.*

SECOND MISSOURI STRUGGLE.

Such was the state of the public mind when the Sixteenth Congress assembled, December 6, 1819. Mr. Clay was again elected Speaker. On December 8, 1819, by motion of Scott, of Missouri, the memorial from that State praying for admission was referred to a select committee. On the same day Mr. Strong, of New York, gave notice of his intention to introduced a bill to prohibit the further extension of slavery in the Territories of the United States. On the following day, December 9, Scott, chairman of the special committee, all but one of whom were from the slave States, reported an enabling act for Missouri which was read twice and referred to the Committee of the Whole. At the same time Strong waived his notice of the previous day in view of the fact that the same issue would be presented in the proposed Missouri bill.

The Missouri bill did not again come up in the House till January 24, 1820. On the 26th Mr. Taylor, of New York, offered an amendment requiring that Missouri should "ordain and establish that there shall be neither slavery nor involuntary servitude, otherwise than in punishment of crimes whereof the party shall have been duly convicted," followed by the usual provision for the rendition of fugitive slaves.

This restrictive amendment was debated almost daily for nearly a month, until February 19, when a bill came down from the Senate "to admit the State of Maine into the Union," carrying the whole Missouri bill, without restriction, as a "rider."

A word of retrospect as to Maine: By an act of the State of Massachusetts of June 19, 1819, the people of that part of Massachusetts known as Maine were permitted to form themselves into an independent State. In this instance Massachusetts freely consented to her own division, but these proceedings were to be void unless Maine were admitted to the Union by March 4, 1820. Accordingly, the people of Maine formed a constitution, organized a State government, and petitioned Congress for admission to the Union. Her case was

* One of the ablest and most notable of the pamphlets was by Robert Walsh, jr., of Philadelphia, in favor of restriction. (*See* Niles Register, vol. 17, p. 307, and Madison's letter to Walsh, Vol. III, of Madison's Works.)

exactly parallel with that of Kentucky, and, as in Kentucky's case, it was only necessary that the bill admitting Maine should be a brief enactment, "that from and after March 3, 1820, the State of Maine is hereby declared to be one of the United States of America," and shall extend the United States laws over her territory and assign her a fair proportion of representatives. Ordinarily this simple process of admission would be an easy matter, and but for the issue over Missouri, Maine's admission would have passed unquestioned. The House had passed an ordinary Maine bill, January 3, 1820. The Senate had already passed a similar bill to a second reading, merely declaring the consent of Congress to Maine's admission as early as December 22, 1819, the first month of the session. It was not until January 6, 1820, three days after the House Maine bill had come to the Senate, that the scheme of carrying Missouri through on the back of Maine was put into formal shape. On that day the Senate Committee having the Maine bill in charge reported it with the Missouri "rider," but on the 13th the House Maine bill was substituted with the Missouri attachment.

It is not known what politician first suggested the party stroke of forcing this combination of the two bills in one—that the admission of Maine should be made dependent upon unconditional admission of Missouri. It is known, however, that Henry Clay gave public approval to the idea two weeks before in the House discussion on the Maine bill.

Holmes expressed the hope, in discussing the bill for Maine, that the question had not gone to the extent of making one distinct measure depend upon another, and that the admission of Maine did not depend upon giving up restriction on Missouri. Clay, in an undertone, said that it did, and then answering Holmes he asserted publicly that he did not intend to give his consent to the admission of Maine until the doctrine of imposing conditions were given up. This was in December, 1819. Clay gave, perhaps, the most plausible statement in defense of a position which is usually regarded only as a politician's resort of forcing a compensation for doing his duty. "A State in the quarter of the country from which I come," says Clay, "asks to be admitted to the Union. What say the gentlemen who ask the admission of Maine? Why, they will not admit Missouri without a condition which strips her of an essential attribute of sovereignty? What, then, do I say to

them? That justice is due to all parts of the Union; your State shall be admitted free of condition, but if you refuse to admit Missouri also free of condition we see no reason why you shall take to yourselves privileges which you deny to her, and until you grant them also to her we will not admit you. This notion of an equivalent is not a new one; it is one upon which commonwealths and States have acted from time immemorial." Holmes then pertinently remarked that in this Clay had taken the position that "unless others do what they think is wrong you will not do what you acknowledge to be right." And Livermore, of New Hampshire, pointedly inquired of Clay why he had not "called a pause" on the usual admission of States before the admission of Alabama in that very year. The situation clearly shows us that the real issue, that which divided men into party contestants and was decisive of their votes and conduct, was the question of slavery and its interests. The doctrine of the sovereignty and equality of States was put forward to defend the interests of slavery.

When the Maine bill was reported to the Senate by the committee, with the Missouri "rider," January 13, 1820, Senator Roberts, of Pennsylvania, endeavored to secure a recommitment of the bill with a view to their separation. Failing in this he moved, on January 17, an absolute antislavery restriction. After this was voted down the restrictionists in the Senate came again to the conflict by a motion from Senator Burrill, of Rhode Island, to apply to Missouri "the first three articles of compact in the ordinance of 1787." The great debate then continued in the Senate for a month, and on February 16, 1820, the Senate agreed to the amendment of its committee combining the Maine and Missouri bill in one. Then Mr. Thomas, of Illinois, amid the highest excitement of the debate, offered the following important amendment to the Missouri section of the bill:

> *And be it further enacted*, That in all that territory ceded by France to the United States under the name of Louisiana, which lies north of 36° and 30′ north latitude, excepting only such part thereof as is included within the limits of the State contemplated by this act, slavery and involuntary servitude, otherwise than in punishment of crime whereof the party shall have been duly convicted, shall be and is hereby forever prohibited."

This amendment contains the substance of the final settlement. Barbour, of Virginia, attempted to have the line fixed at 40° and 30′; only three Senators voted for his proposition.

Eaton, of Tennessee, offered as a substitute for the Thomas amendment a section prescribing the same limits as the Thomas amendment, but providing that the restriction apply only while said portion of country remains a Territory. Eaton found it useless to press the substitute, which was merely an abstract declaration against the right of Congress to impose conditions upon a State, and he withdrew it. Trimble, of Ohio, proposed to make the restriction apply to all territory west of the Mississippi except Missouri. After these three suggestions had been made in vain the Thomas amendment was adopted the next day in the Senate by a vote of 34 to 10, without change and without debate, and on the 18th the Maine and Missouri bill in one, with the compromise amendment, was formally passed.

On February 19, 1820, the House took up these Senate amendments to the Maine bill. Taylor moved that the House disagree, whereupon Scott moved that the amendments be sent to the Committee of the Whole, which was then, and had been for days, considering the House Missouri bill. This motion took precedence and a spirited debate followed, but commitment was defeated by a vote of 107 to 70. The question then came up on the motion to disagree, which was debated for three days, when, on February 23, the House disagreed to the Missouri attachment by a vote of 93 to 73, and then to the restrictive amendment by 159 to 18. So the Senate Maine-Missouri bill with the Thomas amendment was defeated in the House. The House then went into the Committee of the Whole on its own bill with the Taylor restriction, which was still pending. The House continued the debate on this restrictive clause February 24 and 25. On the 26th Mr. Storrs, of New York, moved the substance of the Thomas amendment, and supported it in a speech "embracing *incidentally* an examination of the right of imposing the slavery restriction on Missouri."* On the 28th of February the Senate sent a message to the House saying that it insisted on its amendments. Taylor moved that the House insist upon its disagreement. By a vote of 97 to 76 the House again refused to agree to the log-rolling of Maine and Missouri into one bill. Then

* The italics are mine. This indicates what is clear throughout the debate, the distinction made by Congress between barring slavery from the Territories and imposing conditions on a State. Very few denied to Congress the former power.

disagreement to the restrictive compromise amendment was voted by 160 to 14, Lowndes, of South Carolina, explaining for the friends of Missouri that though he favored such a proposition yet, since the free admission of Missouri had been defeated, the restrictive amendment was useless, and there was no motive to vote for it with the Maine bill alone. The chief desire of the men for whom Lowndes spoke was to secure the immediate admission of Missouri without restriction; to that end they were ready to consent to restriction on the Territories. The House had again disagreed to both amendments of the Senate.

The Senate was then about to adjourn when the Clerk of the House presented himself at the door with a message that the House had insisted upon its disagreement. Mr. Thomas, of Illinois, then moved that a committee of conferrence be appointed, which was the occasion of a debate of "vehemence and warm feeling."* The Senate voted to request a conference, and Senators Thomas of Illinois, Pinkney of Maryland, and Barbour of Virginia, were appointed the Senate conferees. On the following day, February 29, the House agreed to confer, and Messrs. Holmes of Massachusetts, Taylor of New York, Lowndes of South Carolina, Parker of Massachusetts, and Kinsey of New Jersey, were appointed to manage the conference on the part of the House.

On March 1 the House passed its Missouri bill with restriction. It was immediately taken up in the Senate and on March 2 it was passed, after striking out restriction and substituting the Thomas compromise amendment. This agreed with what, it seemed to be understood, would be the report of the conference committee. This report was made in the House by Mr. Holmes on March 2. It contained three distinct recommendations:

(1) The Senate should give up a combination of Missouri in the same bill with Maine, and Maine should be admitted.

(2) The House should abandon the attempt to restrict slavery in Missouri.

(3) Both Houses should agree to pass the Senate's Missouri bill with the Thomas restriction excluding slavery north and west of that State.

After the reading of the report the first and vital question was then put to the House: Will the House concur with the

* Seaton's Annals.

Senate in admitting Missouri without restriction as to slavery? On this vital question a last, short, fervent debate occurred. Lowndes of South Carolina, Holmes of Massachusetts,* and Mercer of Virginia, spoke vigorously. Kinsey, of New Jersey, as one of those holding the balance of power between the contending forces, voiced the opinion of the moderate restrictionists who were now ready to compromise. The cause upon which he relied was the cause of the Union, and to the desire and love of Union he appealed. This had been the cause of compromise before, as it was destined to be many a time since.

Kinsey in the closing debate said:

> Now, sir, is to be tested whether this grand and hitherto successful experiment of free government is to continue, or after more than forty years enjoyment of the choicest blessings of heaven under its administration, we are to break asunder on a dispute concerning a division of territory. Gentlemen of the majority have treated the idea of a disunion with ridicule; but to my mind it presents itself in all the horrid gloomy features of reality. * * * On this question, which for near six weeks has agitated and convulsed this House, I have voted with the majority. But I am convinced should we persist to reject the olive branch now offered, the most disastrous consequences will follow. Those convictions are confirmed by that acerbity of expression arising from the most irritated feelings, wrought upon by what our Southern brethren conceive unkind, unjust, determined perseverance of the majority, and to those I now beg leave to address myself. Do our Southern brethren demand an equal division of this widespread fertile region, this common property purchased with the common funds of the nation? No; they have agreed to fix an irrevocable boundary beyond which slavery shall never pass; thereby surrendering to the claims of humanity and the nonslaveholding States, to the enterprising capitalist of the North, the Middle, and Eastern States, nine-tenths of the country in question. In rejecting so reasonable a proposition we must have strong and powerful reasons to justify our refusal. * * * Should we now numerically carry the question it will be a victory snatched from our brothers. It will be an inglorious triumph, gained at the hazard of the Union. Humanity shudders at the thought. National policy forbids it. It is an act at which no good man will rejoice, no friend of his country can approve. †

The House decided to give up restriction by a vote of 90 to 87. Fourteen of those who voted to forego restriction on Missouri were from the free States. Taylor, the persistent and valiant leader of the early free-soilers, who, as a member of the conference committee from the House, was the only one of all the committee who refused to concur in the report, made a last

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* Holmes represented the district of Maine and was anxious for its admission as a State. He became one of Maine's first Senators.

† Annals of Congress, Sixteenth Congress, first session, vol. 2, p. 1579.

effort for his cause by endeavoring to secure the insertion of a line excluding slavery from all the territory west of the Mississippi except Missouri, Arkansas, and Louisiana, but the phalanx of restriction had been broken and his worthy effort failed. The Missouri bill, enabling Missouri to form her constitution, passed both Houses March 2, 1820. The following day the Maine bill passed the Senate. Maine was admitted, and the people of Missouri were authorized to form a State government and constitution. And this was the end of the second struggle.

In reviewing the struggle in his mind the careful student will distinguish here between the two totally distinct propositions in reference to restriction: (1) The original restriction of Tallmadge, which Clay vehemently opposed, proposed the exclusion of slavery from Missouri. This was restriction on a *State*, and was opposed on that ground. (2) The final restriction of Thomas proposed the exclusion of slavery from the Territories of the United States north and west of Missouri. This proposition was adopted; but it did not emanate from the original Missouri restrictionists, nor did it by any means satisfy them. The final compromise measure was proposed by a steadfast opponent of the original Tallmadge amendment. "The current assumption," says Greeley, "that this restriction was proposed by Rufus King, of New York, and mainly sustained by the antagonists of slavery, is wholly mistaken. The truth, doubtless, is that it was suggested by the more moderate opponents of restriction on Missouri as a means of overcoming the resistance of the House to slavery in Missouri. It was, in effect, an offer from the milder opponents of slavery restriction to the more moderate and flexible advocates of that restriction. 'Let us have slavery in Missouri and we will unite with you in excluding it from all the uninhabited territories north and west of that State.' It was in substance an agreement between the North and the South to that effect, though the more determined champions, whether of slavery extension or slavery restriction, did not unite in it."* This statement of Greeley is borne out by the record and the final vote. After the prolonged and bitter contest; after a debate, then without a parallel in the history of Congress, a debate equaled only in the Constitutional Convention of 1787, which itself had settled the slavery question by compromises; facing

*Political Text Book, 1860, p. 63.

bitter prophecies of disunion as an alternative; with earnest and impassioned appeals for peace and compromise still resounding in their ears, 87 original restrictionists still held out for restriction on Missouri. They would not consent to a single other slave State in the American Union, and restriction was finally abandoned only by a majority of three votes. Slavery was allowed in Missouri, and restriction was beaten only by the plan of proffering instead an exclusion of slavery from all the then Federal territory west and north of that State. Without this compromise, or its equivalent, the Northern votes needed to pass the bill could not have been obtained.*

THE THIRD MISSOURI STRUGGLE.

It seemed that, at last, this protracted struggle had been brought to a close. Maine was now admitted, coming in within the time assigned by Massachusetts. Nothing now remained but that Missouri should form her constitution, that it be formally accepted by Congress, and that the new State take her place with the rest.

A Missouri convention assembled at St. Louis and adopted a constitution for the new State July 19, 1820. The people of Missouri were displeased with the long delay which had been imposed upon them by the introduction of a subject which they felt was a concern of themselves alone. It was their right, in their opinion, to settle the slavery question for themselves. In this feeling of resentment, and led by extremists in the convention, they inserted a provision in their constitution declaring that "it shall be the duty of the general assembly, as soon as may be, to pass such laws as may be necessary to prevent free negroes or mulattoes from coming to or settling in this State under any pretext whatever."† This constitution was laid before Congress by Mr. Scott, the delegate from Missouri, on November 20, 1820. The objectionable clause in her constitution gave rise to a stouter and more serious contest than any which had preceded. There arose once more a bitter parliamentary struggle, which provoked dire threats of the dis-

* Greeley, Political Text Book, 1860.

† The constitution also forbade the legislative emancipation of slaves without the consent of the masters. These two new subjects were to be presented for the consideration of Congress, and it was evident that the whole subject would again be reopened. It seemed as if Missouri wished to meet Congress in a spirit of defiance.

solution of the Union. The lines of the old contest formed again. The antislavery men and restrictionists who had so hotly contested Missouri's admission as a slave State determined to continue that opposition. They were joined by some who had formerly voted against restriction, but who were now ready to vote against admission. They based their opposition upon the ground that the obnoxious clause in Missouri's constitution was an insulting reflection upon every State in which colored men were citizens, and that it was in direct contravention of that clause in the U. S. Constitution which declares that "the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States."*

Missouri's constitution, upon its presentation, was referred to a committee of which Mr. Lowndes, of South Carolina, was chairman. Within a week the committee reported in favor of admission, proposing to effect this by a simple resolution, "that the State of Missouri shall be, and is hereby declared to be, one of the United States of America, and is admitted to the Union on an equal footing with the original States." The report considered the objection which had been urged to Missouri's ready admission, although this objection had not yet come under the cognizance of Congress.

Mr. Lowndes, in a notable speech advocating the immediate recognition of Missouri as a State, held that the enabling act of the former session was a complete act of admission, that the time and circumstances which made a people a State were the time at which its people formed a constitution, and the act of forming it. This view, Mr. Lowndes contended, was according to precedent. In the case of Indiana, December 11, 1816, the practice of a subsequent declaration of admission first occurred,

* Benton virtually acknowledges the presence of a defiant spirit in the Missouri convention. He says: "The State of Missouri made her constitution sanctioning slavery and forbidding her legislature to interfere with it. This prohibition, not usual in State constitutions, was the effect of the Missouri controversy and of foreign interference, and was adopted for the sake of peace to prevent the agitation of the slave question. I was myself the instigator of that prohibition and the cause of its being put into the constitution—though not a member of the convention—being equally opposed to slavery agitation and to slavery extension. There was also a clause prohibiting the emigration of free people of color into the State. This clause was laid hold of in Congress to resist the admission of the State; but the real point of objection was the slavery clause and the existence of slavery in the State." (Thirty Years' View, Vol. I, pp. 8, 9.)

and this declaration was but a formal notification to the other States that a new member had been admitted. The act of the last session which had been agreed to by the compromise after so long a struggle did not merely give to the people of Missouri the right to propose a constitution, but it conferred on that people all the rights of the proudest and oldest States. This is clearly seen, urged Mr. Lowndes, from the fact that while the act was under discussion Mr. Taylor, of New York, the leader of the restrictionists, had moved to insert an amendment providing that if the constitution of the new State "shall be approved by Congress, the said Territory shall be admitted as a State upon the same footing as the original States." This amendment was voted down, implying that Missouri would be admitted without such condition. We had given Missouri the right of self-government, and we cannot now take it from her.

Mr. Lowndes would not undertake to decide whether or not the objectionable clause was constitutional. He would leave that for the Supreme Court to determine. He was aware that a very large majority of the free blacks of the United States were not considered citizens in their respective States, and this provision of Missouri might be construed as intending to exempt from its provision such of the blacks as were citizens in other States. A similar provision discriminating against free colored persons was in the constitution of Delaware. No one contended that Congress could sit in judgment on the various constitutional provisions of the old States. The States, old and new, must be equal, and why should Missouri be singled out for invidious distinction? The question should be left to the Judiciary as the proper tribunal to interpret the law. When Tennessee presented herself for admission, having formed a constitution without an enabling act of Congress, Mr. Smith, of South Carolina, objected, on the ground that the constitution of Tennessee was incompatible with that of the United States; Mr. Baldwin replied that "if there should be things in the constitution of Tennessee not compatible with the Constitution of the United States it was well known that the Constitution of the United States would be paramount; they can therefore be of no effect." In that case the question of constitutional law was left to the supreme judicial tribunal.

Mr. Sergeant, of Pennsylvania, replied to Mr. Lowndes. He did not consider that a Territory became an independent and sovereign State at the time it formed a constitution. Congress

could not admit a State by anticipation. Congress could not bind itself to the admission of a State so as to have no choice but to accept such a constitution as that State chose to offer. Giving authority to the people of a Territory to form a State constitution did not admit them into the Union, unless their constitution should be such as the people of the United States, through their representatives, thought fit to accept as a fundamental rule of government. If it be true that Missouri has already the "rights of the oldest and proudest States" why are we deliberating? Why is this resolution now under consideration? Why are the Senators and the Representative from Missouri kept waiting at our doors until they learn the fate of this resolution? Why was Missouri's constitution submitted to a committee? Why has that committee made a report which we are now discussing? And why did the committee consider it necessary to go into an examination of a particular clause of that constitution, pointing out a mode by which Congress might relieve itself from the task of deciding on its constitutionality by leaving it to the judiciary? The reason assigned by the committee in the "whereas" of the resolution is that Missouri has formed a constitution in conformity with our act of the last session. How could the committee know this? In the act authorizing the formation of this constitution were found two limitations—that the constitution should be republican and that it should not be repugnant to the Constitution of the United States. Is it not indispensable before passing a resolution like this that the members of this House should be satisfied that these requisitions have been complied with? Can it be said that Congress has parted with the power of looking into the constitution of Missouri when it had expressly prescribed conditions which should be indispensable to its acceptance? If Missouri is now involved in difficulty it is the fault of the people of Missouri. This is a difficulty which they themselves have created; the failure to fulfill the compact is on the part of the people of that Territory. Would the people of Missouri think more highly of Congress were we to yield to them on this occasion? How much better it would be for Congress at once to take its ground and refuse to sanction the constitution of any State which is in any respect repugnant to that of the United States. Would any one pretend, if this constitution instead of being faulty in one particular were faulty from beginning to end, that Missouri would

be entitled to admission? Yet the surrender of our right to decide in one particular involved the whole. With respect to the proposition to turn the question over for decision to the Judiciary, Mr. Sergeant said that he must declare, with the greatest respect for that judicial body, that he could not consent, on a question which was properly presented for his own decision, to say, "Let the question sleep till some humble individual, some poor citizen, shall come forward and claim a decision of it." He would not leave to some individual to do what it was the duty of Congress to do. Such is a résumé of the initial speech in the renewed opposition to Missouri.

These speeches opened a long and animated debate. The principal theme of discussion was the citizenship of free persons of color, and the subject was examined from every point of view. Mr. Barbour, of Virginia, attempted a definition of the term citizen. There was not a State in the Union, in his opinion, in which colored men were citizens in the sense in which the Constitution uses the term—no State in which they have all the civil rights of other citizens, and therefore the constitution of Missouri did not infringe the Constitution of the United States.

Mr. Archer, of Virginia, remarked that if there were colored persons who were citizens in some of the States, there was notoriously a much larger class who did not belong to this description, and the clause in Missouri's constitution might be considered as operating only on this latter class. To reject her constitution in the present state of the public mind would lead to suspicion that the policy of restriction was to be reopened; in that case the wound inflicted on the harmony of the country would be incurable; every man must perceive that the Union would be gone.

Mr. McLane, of Delaware, asserted that free negroes and mulattoes are not that description of citizens contemplated by the Constitution of the United States as entitled to Federal rights. What rights they have are of a local nature, dependent upon the gratuitous favor of the municipal authorities of the States; these rights are limited to the States granting them and confer no Federal privileges and immunities. The free negro must be shown to be of "that description of citizen" to whom the Constitution meant to guarantee equal rights in every State.

Mr. McLane was answered by Mr. Eustis, of Massachusetts,

who showed that the rights of citizenship in the States were left to the States themselves and that in Massachusetts the free negro was in the enjoyment of equal citizenship under the laws; there the free negro was in the enjoyment of civil rights, which were guaranteed to him by the Constitution of the United States, and of which he should not be deprived.

On December 13, 1820, the House rejected the resolution for the admission of Missouri by a vote of 93 to 79. Mr. Lowndes then said that while he did not wish to be disrespectful to the majority of the House, he now called upon that majority "to devise and propose means necessary to protect the Territory, property, and rights of the United States in the Missouri country." The Missouri question now disappears from the Congressional debates for two weeks. On January 5, 1821, Mr. Archer of Virginia, offered in the House a resolution instructing the Committee on the Judiciary to inquire into the legal relation of Missouri to the United States—to ascertain whether there were United States tribunals there "competent to exercise jurisdiction and to determine controversies, and if there be no such tribunals, to report such measures as will cause the laws of the United States to be respected there." Mr. Archer asserted that in his opinion Missouri stood entirely disconnected from any legal or political relation with the United States Government. "With our own hands we have cut all the moorings, and she floats entirely liberated and at large. She stood formerly in the relation of a Territory; she had proposed to assume the relation of a State. This House had refused her permission to do so, and Missouri stands discharged from all relation to the Union." This resolution was the next phase of the Missouri question, which gave rise to a spirited debate. The friends of Missouri held that their position was anomalous. She was not a Territory, she was not a State; the authority of the Union hung over her, but there was no legal mode by which it could be exercised—the channels by which the authority of the United States Government could be exercised had been cut off. On the other hand, the opponents of Missouri's admission held that her relation to the Union were as they had been, and they succeeded in laying the Archer resolution of inquiry on the table. This prevented the House Judiciary Committee from giving a public legal declaration of Missouri's relations and rights, and by this action the

House assumed the existence of the Territorial relation, without, however, any express settlement of the question.

Missouri next came up in the House debates on a question of amending the Journal. On January 11 Mr. Lowndes presented three memorials from the senate and house of representatives of Missouri. On the 12th Mr. Cobb, of Georgia, moved to amend the Journal by inserting the words "the State of" before the word "Missouri." After some rapid sparring in debate the parties ranged themselves for another vote, and the motion of Mr. Cobb was lost by the casting vote of the Speaker, and the House thus again refused to recognize Missouri as a State. Mr. Parker, of Virginia, then moved to amend the Journal by inserting before "Missouri" the words "the Territory of." The House had denied what Missouri is not, they must now say what she is. The Speaker then explained from the chair that the Journal should be prepared by the Clerk. The rules of the House made it the duty of the Speaker "to examine and correct the Journal before it is read." In this case the memorials had been purposely made to read so as neither to affirm nor deny that Missouri was a State, since the House was divided upon that question. In the course of the debate which continued, Mr. Parker, who had made his motion for the purpose of bringing the House to a decision, said: "I say Missouri is a State; and were I a citizen of that State, I would never, at your suggestion, strike out that clause in her constitution to which objection has been made. If I found it convenient to myself to do so I would; but I would not do it on your recommendation, even for the important boon of being admitted in the Union. I would rather be trodden down by the armies from the North and East than yield this point. If ever a people on earth has been maltreated it is this people." The motion of Mr. Parker was voted down, and the House proceeded to discuss the right of the Speaker to make the alterations in the Journal which he had made in these memorials. Thus, while refusing to acknowledge Missouri as a State, the House refused to declare that she was a Territory. It left the question in statu quo.

On January 24, 1820, Mr. Eustis, of Massachusetts, offered a resolution declaring the admission of Missouri on condition that the objectionable clause in her constitution be expunged. His object was to remove the only objection to the admission of Missouri. This resolution was negatived by a large majority.

On January 29, 1820, a resolution from the Senate came to the House and was taken up there in Committee of the Whole. This Senate resolution admitted Missouri, provided—

> That nothing herein contained shall be so construed so as to give the assent of Congress to any provision in the constitution of Missouri (if any such there be) which contravenes that clause of the Constitution of the United States which declares that the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States.

One objection which had been urged to admitting Missouri with her objectionable constitution was that to do so would be to consent to the unconstitutional provision of her fundamental law. The Senate resolution was intended to meet this objection. It admitted the probability that Missouri's objectionable clause contravened the Constitution of the United States and merely asserted the Senate's unwillingness to have its admission of Missouri interpreted as making Congress a party to such violation. This was not satisfactory to the opponents of Missouri, who held that the responsibility was on Congress; it was the duty of Congress to prevent a violation of the Constitution, and this resolution merely shirked the responsibility. It was seen that the resolution would be rejected by the House.

Between January 29 and February 2 no less than six amendments were proposed in the nature of binding Missouri either to expunge the offensive clause of her constitution or never to enact a law in obedience to that clause. The debates of these days covered the evils of slavery, the rights of the South, the balance of power, the nature, obligations, and benefits of the Unicn. On February 2 Mr. Clay, seeing that all efforts at amendment had failed, and anxious to make a last effort to settle this distracting question, moved to refer the Senate's resolution to a special committee of thirteen members.*

REPORT OF COMMITTEE OF THIRTEEN.

On February 10 Mr. Clay, on behalf of the Committee of Thirteen, reported. The committee had desired to arrive at a conclu-

*The Committee of Thirteen consisted of the following: Clay of Kentucky, Eustis of Massachusetts, Smith of Maryland, Sergeant of Pennsylvania, Lowndes of South Carolina, Ford of New York, Archer of Virginia, Hackley of New York, S. Moore of Pennsylvania, Cobb of Georgia, Tomlinson, of Connecticut, Butler of New Hampshire, Campbell of Ohio.

sion which would give general satisfaction; they had sought a full and frank comparison of opinion among themselves; the committee was of the unanimous opinion that no condition ought to be imposed on Missouri except those suggested at the last session of Congress, i. e., that her constitution should be republican and in conformity with the Constitution of the United States; that the question of restriction should not be raised. This limited the consideration of the committee to the question whether Missouri's constitution was in conformity with these conditions, and it was found that the only objection to her constitution was the clause to which exception had been taken. On that clause the same diversity of opinion appeared in the committee which had been made manifest in the House. "With these conflicting opinions the committee thought it best that, without either side abandoning its opinion, an endeavor should be made to form an amendment to the Senate resolution which should contain an adequate security against the violation of the privileges and immunities of citizens of other states in Missouri." Accordingly, Missouri is to be admitted into the Union "upon the fundamental condition that she shall never pass any laws preventing any description of persons from going to or settling in the said State who now are, or hereafter may become, citizens of any of the States of this Union; and upon the legislature of the said State signifying its assent to that condition, by a solemn public act, which is to be communicated to the President of the United States, he is to proclaim the fact, and thereupon the admission of the said State is to be complete. To prevent, however, this amendment from being considered as impairing any right which may appertain to Missouri, in common with other States, to exclude from her jurisdiction persons under peculiar circumstances (as paupers and vagabonds), a further proviso is added declaring Missouri's right to exercise any power which the original States may constitutionally exercise."

This report from the special Committe of Thirteen, made on the 10th of February, was laid on the table until February 12. The debate was then again renewed, involving charges and countercharges on the balance of power between the sections and on the matter of slave representation. The majority in opposition to Missouri was still obdurate, and the Senate resolution, amendment and all, was rejected by the close vote of 83 to 80. Members in ill health, who had not been in the hall

when their names were called, appeared and asked to have their votes recorded. This could not be done except by unanimous consent. This was not given and the work of the Committee of Thirteen seemed to have come to nothing. Mr. Livermore, however, an opponent of Missouri, who had objected to the contested votes, gave notice of a motion to reconsider in order that the question might be fairly tested in a full vote of the House. On the next day, February 13, 1821, Mr. Livermore made his motion for reconsideration. Some of the friends of Missouri opposed the motion for reconsideration, partly because they would not have Missouri burdened with any conditions whatever, holding that she was only kept out of the Union by violence and injustice; partly because, as in the case of Mr. Randolph, of Virginia, they held that the battle had been fairly fought and won by the other side, and that another way must be found to settle this question. Mr. Clay made a successful plea for reconsideration, and again the House plunged into a heated debate. At this stage of the controversy Mr. Pinckney, of South Carolina, made a notable speech. He considered that the country "had now arrived at the most awful period which had hitherto occured on this delicate and distressing subject." He quoted from a letter of Jefferson, lately published, indicating the portentous character of the Missouri question.* 'I agree perfectly with him,' said Mr. Pinckney, "and I consider this, beyond all comparison, the second question in importance which has been agitated among us since our revolt from the parent State. The first was the memorable declaration which confirmed the Union and gave birth to the independence of our country. This is the only one which may, in its consequences, lead to the dissolution of that very Union, and prove the deathblow to all our political happiness and national importance. I express this fear from the fact that gentlemen of the opposition have seen fit to throw off the veil and expressly declare their intention to leave this question to the next Congress; to leave to them unfettered by any act of ours the power to decide how far the true interests of the Union may make it necessary to renew the struggle for restriction of slavery in Missouri—a

* "The Missouri question is the most portentous one that ever threatened our Union. In the gloomiest moments of the Revolutionary war I never had any apprehension equal to that I feel now from this source."—(Jefferson.)

struggle which has during the last three sessions shaken the Union to its very foundations. They openly avow that they do not consider themselves bound by the compact of last year, but aver, if they have the strength to do so, to leave the next Congress free to decide this question as they please." Mr. Pinckney then went into an examination of the constitution of Missouri, claiming for it an excellence and superiority over the constitutions of other States. "Can it be possible," he asked, "that so excellent a systen can be rejected for the trifling reason that it inadvertently contains a provision prohibiting the settlement of free negroes and mulattoes among them Or is it not infinitely more probable that other reasons of a much more serious nature, and pregnant with the most disastrous events to the future union and peace of these States, are at the bottom of this unexpected and inexcusable opposition? The article of the Constitution on which now so much stress is laid—'the citizens in each State shall be entitled to all the privileges and immunities in every State,'—having been made by me, it is supposed that I must know, or perfectly recollect, what I meant by it. In answer, I say that, at the time I drew that article, I perfectly knew that there did not then exist such a thing in the Union as a black or colored citizen, nor could I have conceived it possible such a thing could ever have existed in it.* Missouri having no idea of the existence of such a thing as a black or colored citizen of the United States, and knowing that all the Southern and Western States had for many years passed laws to the same effect, which laws are well known to Congress, being at this moment in their library and within the walls of the Capitol, and which were never before objected to by them or their courts, they (the people of Missouri) were no doubt warranted in supposing they had the same right. The silence of Congress on the antecedent laws of Southern and Western States might fairly be considered a sanction to Missouri's proceeding."

This speech of Mr. Pinckney gave indirect public expression to the charge, which had been frequently bandied in political circles, that the anti-slavery restrictionists, having secured the admission of Maine, were now not willing to fulfill the terms of the compromise; that they were guilty of a breach of faith. The injustice of this view is indicated by the fact that some members who had voted against restriction on Missouri in the

*Gen. Pinckney was a member of the Constitutional Convention of 1787.

previous session, were now opposing her admission under her objectionable constitution. Mr. Foot, of Connecticut, was of this number, and he asserted at this stage of the controversy that he would never vote for Missouri's admission unless the offensive clause were expunged. It was evident that Missouri's objectionable clause had aroused the temper of the House and excited its antagonism. But, no doubt, the original restrictionists were ready to seize this opportunity to put an obstacle in the way of the admission of another slave State. Mr. Clay, struggling for conciliation, closed the debate. He alternately reasoned, remonstrated, and entreated the House, but his effort was in vain, and his compromise resolution was rejected by a vote of 88 to 82.

It was the day after this seemingly final rejection of Missouri that the two Houses were appointed to meet to count the electoral vote for President and Vice-President. It had been seen, of course, that the question would arise whether the vote of Missouri should be counted, or whether it was entitled to be cast. It had not yet been decided whether Missouri was a State. In order to come to some arrangement by which the Houses could avoid this question when they should come into joint session, Mr. Clay had, ten days before, on February 4, offered in the House a resolution providing that if any objection be made to the vote of Missouri the President of the Senate, who was to preside on this occasion, should be directed to announce what the result would be if the votes of Missouri were counted and what it would be if the votes of Missouri were not counted; "but in either case A. B. is elected President of the United States."

This resolution was adopted only after considerable debate as to the status of Missouri. The Senate also agreed to this plan. There was still much fear, however, that it would not be successful in keeping the peace. The fear was realized. The joint meeting of the two Houses on the 14th of February was one of turbulent excitement. It was frequently interrupted by simultaneous challenges of Missouri's vote. When the vote of Missouri was announced Mr. Livermore, of New Hampshire, arose and said: "Mr. President and Mr. Speaker, I object to receiving any votes for President and Vice-President from Missouri, as Missouri is not a State of this Union." This objection was numerously and clamorously seconded. Confusion and tumult followed, till "at last a Senator, with a

voice above the wildness of the scene, moved that the Senate withdraw, which was immediately obeyed, and the House was left in sole possession of the field."* Disorder continued in the House after the Senate's withdrawal, one member crying "Missouri is not a State," another shouting, "Missouri is a State." An hour of wrangling followed. When order was restored, Mr. Floyd, of Virginia, rose and offered the following resolution:†

Resolved, That Missouri is one of the States of this Union, and her votes for President and Vice-President of the United States ought to be received and counted.

Mr. Floyd said that he now considered the House brought to the brink of the precipice. "The votes of other States had been received and counted before their admission had been formally declared. The question of Missouri was now brought fairly to issue. Let us know whether Missouri be a State in the Union or not. If not, let us send her an ambassador, and treat for her admission. Sir, we can not take another step without hurling this Government into the gulf of destruction. For one, I say I have gone as far as I can go in the way of compromise, and if there is to be a compromise beyond that point, it must be at the edge of the sword."

Mr. Archer, of Maryland, moved the indefinite postponement of Mr. Floyd's resolution. He was a friend of Missouri, but he could not assert by his vote that she was a member of the Union without the acceptance of her constitution by Congress, as much as he "reprobated the foul combination for her rejection."

John Randolph, of Virginia, considered that in this resolution Missouri had for the first time presented herself in visible and tangible shape. "Now comes the question whether we will not merely repel her, but repel her with scorn and contumely." He would have had this question of Missouri at an earlier stage of the proceedings in this concrete shape, as, for instance, the right of her representatives to a seat on the floor. Missouri's vote was now presented in her own person and Congress had no power to reject. Randolph here laid down the strange doctrine that the electoral college was as independent of Congress as Congress was of the college. The duty of the Houses in counting the vote was purely ministerial; it is to

* Cotton's Works of Clay, Vol. 1, p. 283.
† Seaton's Annals.

count the votes, not to reject; there was power to receive the return, but no power to pass judgment on the validity of the return. It must count the vote; but it had no power to determine what were votes. "This was the first instance in which Missouri had knocked at the door and demanded her rights. It is now for us to determine whether she shall now be one of our commonwealths. No doubt Congress may drive Missouri into the wilderness, like another son of Hagar, but if we do we drive her at our own peril."

After this spirited and heated debate, in which Mr. Clay took a prominent part, the resolution of Mr. Floyd was laid on the table, and a message was sent to the Senate that the House was again ready to receive it for the purpose of counting the electoral vote. I quote from the Annals of Congress: "The Senate again appeared and took seats in the House as before. The President of the Senate, in the presence of both Houses, proceeded to open the certificates of the electors of the State of Missouri, which he delivered to the tellers, by whom it was read and who registered the same.

"And the votes of all the States having been thus counted, registered, and the list thereof compared, they were delivered to the President of the Senate, by whom they were read as already printed.

"The President of the Senate then, in pursuance of the resolution adopted by the two Houses, proceeded to announce the vote as follows:

"Were the vote of Missouri to be counted, the result would be for James Monroe, of Virginia, for President of the United States, 231 votes; if not counted, for James Monroe, of Virginia, 228 votes. For Daniel D. Tompkins, of New York, for Vice-President of the United States, 218 votes; if not counted, for Daniel D. Tompkins, of New York, for Vice-President, 215. But in either event, James Monroe, of Virginia, has a majority of the votes of the whole number of electors for President, and Daniel D. Tompkins, of New York, a majority of the whole number of electors for Vice-President of the United States.

"The President of the Senate had proceeded thus far, or nearly thus far, in the proclamation when Mr. Floyd, of Virginia, addressed the Chair and inquired whether the votes of Missouri were or were not counted.

"Cries of 'Order! Order!' were so loud as to drown Mr.

Floyd's voice. The President of the Senate had hesitated in the proclamation on Mr. Floyd's addressing the Chair.

"Mr. Randolph rose and was addressing the Chair, when loud cries of 'Order! Order!' resounded from many voices.

"The Speaker pronounced Mr. Randolph to be out of order and invited him to take his seat.

"Mr. Brush demanded that Mr. Randolph should be allowed to proceed, and declared his determination to sustain his right to do so.

"Mr. Floyd was also declared out of order, and though there was considerable murmuring at the decision, order was restored and the President of the Senate completed the announcement of the election of Monroe and Tompkins.

"Mr. Randolph addressed the Chair, but was required to take his seat. On motion, the Senate retired from the Hall. After they retired, the House being called to order, Mr. Randolph, who had still retained the floor, was heard addressing the Chair. He spoke for some time without being distinctly heard, owing to the confusion in the Hall. 'He had,' he said, 'seen every election of President of the United States except that of the present chief magistrate, and he had never before heard any other form of proclamation than that such was the whole number of votes given in. Sir, your election is vitiated; you have flinched from the question; you have attempted to evade the decision of that which was essential to the determination of who is or who is not elected chief magistrate of the United States.' And Mr. Randolph concluded his remarks with resolutions declaring the election illegal. When he suspended his remarks to reduce his resolutions to writing, a motion was made and carried to adjourn the House."

This scene well illustrates the hot and bitter strife which the contest had engendered. There were now but three more weeks of the session, and it seems that the combatants for Missouri had despaired of reaching a settlement. The next day, February 15, the formal resolution was again repeated by Mr. Clark, of New York, to admit Missouri on condition that she expunge the objectionable clause, but the resolution was laid over without discussion. The House was tired of all the old aspects of the question. The next aspect of the question which excited discussion arose on the proposition of Mr. Brown, of Kentucky, made February 21, to repeal the enabling act for

Missouri. Missouri had not been admitted according to the terms of the compact, and Mr. Brown now demanded, "on the principles of justice which governs contracts, that the anti-slavery restriction should be raised from the rest of the territory. The consideration promised for this restriction has not been paid; the plighted faith of Congress for the admission of Missouri has been violated; then take off the restriction. Sir, the course of the majority can be justified by no principle of reason or sound policy, but must rest for its support on pious fraud." On the day following this speech of Brown Mr. Clay moved the appointment of a joint committee, to consist of 23 members on the part of the House, to take into consideration the admission of Missouri. The committee appointed by ballot reported, on February 24, the report embodying substantially the conclusions of the former committee of thirteen. It was agreed that "Missouri shall be admitted into this Union on an equal footing with the original States, upon the fundamental condition," that the objectionable clause of her constitution should "never be construed to authorize the passage of any laws, and that no law should ever be passed, by which any citizen of either of the States of the Union shall be excluded from the enjoyment of any of the privileges and immunities to which such citizen is entitled under the Constitution of the United States; that the legislature of said State, by a solemn public act, shall declare the assent of said State to the said fundamental condition." Upon the transmission of this act to the chief executive, the President was to proclaim the admission of Missouri.

This report came back to the two Houses with the unanimous approval of the committee from the Senate and with almost the unanimous vote of the committee of the House. But it did not pass the House without another animated debate; and it then passed only by the close vote of 86 to 82. And the Missouri struggle was ended.*

It was in this last phase of the struggle—which seems only like an appendix to the real issue itself—in which Mr. Clay took such an active and prominent part, a part which helped to gain for him the title of "Pacificator." It was in this final compromise, not in the former and more important one, that

*Missouri agreed to the "fundamental condition of her admission" June 26, 1821, and the President's proclamation announcing her admission was dated August 10, 1821.

Mr. Clay was the leading spirit. The final phase of the Missouri struggle has almost disappeared from general knowledge. The first struggle and compromise involved the chief merits of the controversy and dealt with the subjects of permanent interest. But it was in the last phase that the greatest excitement, antagonism, and bitterness were aroused, and it was in this stage that the struggle appeared the most dangerous. But the excitement and danger which this involved were merely temporary. The enduring nature of the Missouri question was involved, not in the final heated struggle, but in the original contest over restriction and the compromise by which this was settled. The subsequent and permanent interest attaching to the subject of this compromise calls for a brief review of the argument brought out by the opposing forces in the original contest for restriction.

THE DEEATE ON SLAVERY RESTRICTIONS.

The argument for the admission of Missouri without restriction rested chiefly on a strict construction of the Constitution. The argument denied the constitutional power of Congress to impose any restriction upon a sovereign State. If a single restriction could be imposed, there was no limit to restriction. A new State might as well be required to abolish any other municipal regulation, or to annihilate any other attribute of sovereignty. Then the discretion of Congress and not the Constitution would be the law for the admission of States. Mr. Pinckney, of Maryland, made the strongest argument, in a notable speech, from this standpoint. He based his opposition to restriction on the constitutional nature of the Union. The Union was a kind of "international compact" between coequal members. No terms can be imposed upon one member of the partnership which are not imposed upon all. "Congress may admit new States into this Union"—this implies that Congress may have power to refuse, but it does not involve power to exact terms. "You must look to the result which is the object of the power. Whether you will arrive at the result may depend upon your will, but you can not compromise with the result intended and professed. What is the proposed result? To admit a State into this Union. What is this Union? A confederacy of coequal sovereigns." Pinckney then affirmed that the Union into which Missouri was to come was to be the Union as originally established. No doubt the rights of the

original thirteen States had been absolutely equal. A discrimination in favor of any one, or against another, would have prevented the formation of the Union. If this discrimination is to meet Missouri, then she is admitted not to this Union but to an entirely different Union. The original thirteen States had, and have to-day, the undoubted right to forbid or to allow slavery. If this right be not allowed to a new State, the Union no longer consists of equal members. "Admit or not, as you choose; but if you admit you must take the new member into this Union, into a union where the new State will be an equal companion with its fellows. Maine is to be seated by the side of her respectable parent, coordinate in authority and honor, but Missouri is to be repelled with harshness and forbidden to come at all unless with the iron collar of servitude about her neck instead of the civic crown of republican freedom upon her brow."* This view considered Missouri already a State, a State applying for admission, with all the rights of a State already appertaining to her. On the basis of the States-rights view that the Union was a compact between the States and that the new State was already as one of these, the argument of Pinckney seems unanswerable. But the argument was strong only on this basis, and by consenting that the rights of a State pertained to the Territory of Missouri. The same argument made by Pindall, of Virginia, is summarized by Von Holst as follows: "The Federal Government has only the powers granted it by the sovereign States; newly admitted States become members of the Union with equal rights; no other grants of power can therefore be demanded from them than those voluntarily made by the original thirteen States; no one affirms that the thirteen original States gave up the right to decide whether slavery should be permitted or prohibited within their borders."†

The principle of nationality was not boldly asserted in answer to this view, which indicates the prevalence and dominance of the States-rights view of the nature of the Union.

It was urged, also, that there had never been a precedent for the imposition of a condition upon a State. The limitations placed on Louisiana in 1812 could not be compared to those proposed for Missouri. In the case of Louisiana it was only required that her laws and constitution should conform

* Pinckney's Speech, Seaton's Annals.

† *See* von Holst, Const. Hist. U. S., Vol. I, p. 364.

to the Constitution of the United States. These conditions, and any others that had ever been imposed on any preceding State, were minor and self-evident; this was fundamental, touching a subject of abiding interest, on which the original States had full freedom of action. The Constitution rested on the equality of members of the Union; it was evident Maine and Missouri would not come in as equal States if Maine could come in as she pleased and Missouri could not. The argument that the States of the Northwest were so conditioned by the Ordinance of 1787 was not analogous; that restriction was imposed in pursuance of a compact; Congress was thus only carrying into effect the disposition of Virginia with reference to this Territory; and it was, moreover, proclaimed at a time when few, if any, settlements were formed within that tract of country. Scott, of Missouri, asserted that in his opinion it was "competent for any of those States admitted in pursuance of the Ordinance of 1787 to call a convention and so alter their constitutions as to allow the introduction of slaves, if they thought proper to do so."

The friends of Missouri also urged that Louisiana, of which Missouri was a part, had been obtained at the cost of the whole Union, and it would be unjust to deprive the people of half the Union of the right to colonize it. The rights of the Southern people to migrate to this Territory involved with them the right to carry their slaves. Besides, slavery already existed in Missouri, and the proposed restriction would be in the nature of an abolition. Slavery existed in this Territory when it was purchased from France. Louisiana had been admitted without disturbing this relation; why should abolition be attempted now? The inhabitants of the Territory had been guaranteed by the treaty of cession in 1803 to all their rights of property, and they had been promised admission. The advocates of Missouri rested heavily on this phase of the argument. This treaty had applied to retain slavery in Louisiana; why not in Missouri?

Nor did the contention for Missouri omit the plea of humanity. Mr. Clay, in speaking against restriction, particularly emphasized the plea that to enlarge the area of slavery would only "dilute" the evil, that it would serve to relieve congestion and suffering in thickly populated slave areas. Slavery in Missouri would "not add to the slave population

* See Art. III, Louisiana treaty.

a single soul, but, on the other hand, would alleviate the unhappy lot of those hemmed in within too narrow lines."

It does not appear that any of those who argued for the free admission of Missouri ventured to defend the institution of slavery. It was generally recognized, on that side of the argument, as a public evil. The defense for Missouri rested almost altogether on the strictly constitutional phases of the question. They touched the evils of slavery only in minor and incidental ways, and only as they were urged to by the attacks of their opponents.

On the other hand, the argument for restriction on Missouri rested mainly on the evils of slavery, and on the political justice and wisdom of restricting the slave area. The greater part of their speeches were occupied in portraying the evils of slavery, and urging the expediency of restriction. They urged that restriction had been the policy of the fathers as seen in the ordinance of 1787, a policy which ought never to have been departed from and which ought now to be resumed and recognized once for all. Their chief concern was to save the territory beyond the Mississippi for free soil, for the benefit of the free laborer. "Give such a man the fee simple of a barren rock, and he will cover it with verdure; plant him in a desert, and fertility will spring around him. Convenience and content are the companions of his toil, and wealth follows in the train of industrious freedom. On the contrary, the slave and his taskmaster, placed in a land flowing with milk and honey, would convert even the Garden of Eden into a desert and a waste.* This from the speech of Plumer represents the general antislavery plea.

The antislavery advocates, however, did not avoid the constitutional argument. Rufus King, of New York, gave the best summary of this argument He rested his case upon two clauses in the Constitution:

(1) "Congress shall have power to dispose of and make all needful rules and regulations respecting the territory and other property of the United States." To make all needful rules implies the right to determine what rules are needful. The power is so manifest and unambiguous that commentary could not make it plainer. It was absurd to say that an act enabling a Territory to become a State could not bind the Territory because it had already become a State. The rights of the

* Plumer's speech, Seaton's Annals.

original States did not pertain to the territories recently acquired until the exercise of those rights was agreed to by Congress.

(2) "Congress may admit new States into this Union." This clearly implies the right to refuse, and also to indicate upon what terms it will consent. The question respecting slavery in the old thirteen States had been decided and settled before the adoption of the Constitution. This document grants no power to Congress to interfere with or change what had been settled; the slave States are therefore free to do as they will. But this agreement did not guarantee forever the admission of whatever other States might wish to come in. On the other hand, the Constitution gives powers of restriction to Congress. Since 1808 Congress had had power to prohibit the migration or importation of slaves into any of the thirteen States; at all times under the Constitution Congress had power to prohibit the migration of slaves to the Territories. The restrictive ordinance of 1787 occurred under a constitution which conferred no such power. The Constitution of 1787 supplied the defect of the Articles of Confederation, and the United States ratified the ordinance. Although Congress possess the power of making the exclusion of slavery a condition of admission it may, in special cases and for sufficient reasons, forbear to exercise this power. This forbearance had been exercised in reference to slavery in the cases of Kentucky, Tennessee, Louisiana, and Mississippi; but in these cases the principle of imposing conditions had been recognized. As Plumer pointed out, Kentucky had been allowed by Virginia to become an independent State only on the express condition that the ordinance of 1787 be applied to her (except the clause on slavery) and that she would never tax the land of nonresidents higher than residents, and would leave the navigation of the Ohio free to all citizens of the United States. No matter by whom the condition was imposed Kentucky had become a State under conditions. The other side had based their argument on the idea and definition of a State. The word implied, according to Clay, a political community possessing the same rights and powers and in all respects resembling the original parties to the compact. But New Hampshire retained the sovereign right to tax the lands of nonresidents higher than the lands of residents; in Kentucky they can not. She does not possess all the attributes of sovereign self-government. The same

conditions were imposed on Tennessee. In the case of Louisiana there were still more notable conditions. In 1804, when the United States took possession of Louisiana, it was estimated to contain about 50,000 whites, 40,000 slaves, and 2,000 free colored people. Four-fifths of the whites, and nearly all the slaves, were in New Orleans and the adjacent territory. About 1,300 slaves were dispersed throughout the country now included in the Arkansas and Missouri territories. Most of these were in Missouri, removing from the old French settlements east of the Mississippi after the ordinance of 1787. In 1812 Louisiana was admitted after Congress had stipulated that her constitution should provide for civil and religious liberty; her laws, records, legislative, and judicial proceedings should be kept in the English language, and the lands of nonresidents be subject only to equal taxation. The habits of the people and the number of slaves by whom the labor of New Orleans territory was performed account for the omission of the antislavery restriction. Certainly it could not be the right to impose conditions which the friends of Missouri were objecting to, but rather the nature of the condition suggested. But this very condition itself had been imposed in the cases of Ohio, Indiana, and Illinois, and expediency now demanded that this condition be imposed on Missouri. The "equal rights" to which new States are to be admitted mean equal federal rights, not equal State rights. States are dissimilar, and do not all exercise the same rights.

Nor was Congress barred from exercising this power by the terms of the Louisiana treaty. True, "the inhabitants of the territory shall be incorporated in the United States and admitted as soon as possible according to the principles of the Federal Constitution * * * and they shall be maintained and protected in the free enjoyment of their property." But the treaty power was not the admitting power, and it could not bind Congress to admit a new State from this region under whatever unexpected, unrepublican, and monarchial conditions it might choose to present itself. Moreover, the term "property" does not include slaves in international law, for all nations do not permit slavery, and in treaties the term "property" does not include them; when stipulations respecting slaves are desired, "slaves" or "negroes" is used. And even if it had been the intention in this stipulation to include slave property, it was only a temporary guarantee applying to the

property then possessed, not to property acquired under the laws of the United States, but to that acquired under the laws of Louisiana. It is absurd to assert that this stipulation secured to the slave owner and his descendants an unlimited right of property in his slaves and their posterity to all eternity.

It had been asserted, also, that the restriction would be nugatory, for the new State in its sovereignty would annul its consent and thus annul the article by which slavery is excluded. This would violate good faith; a State might thus violate any article of the compact by which it was admitted. The judicial power of the United States would be the means by which this wrong could be prevented.

Turning from the constitutional aspects of the question, Mr. King considers the question in its political relations. We may readily suppose that the argument which he makes on this phase of the subject was the most weighty of all considerations with his northern constituency. In American political history two motives have united to lead men into political cooperation to resist the extension of slavery. In 1854–'55 Sumner went into the Republican party chiefly because of his moral hatred of slavery; Seward did so chiefly from political considerations, from the sense of injustice which he felt at the disproportion of political power which the slave system gave to the slave States of the Union. In 1820 King occupied the position of Seward. He did not disregard the evils of slavery, but he looked at the question more as a statesman than as a moralist; he particularly emphasized the political significance and injustice which the admission of slave States involved. King was the antislavery statesman of the Missouri conflict. His argument on this occasion and on this theme best sets forth the merits of the situation and it deserves to be reproduced. He said:

> The rule of representation had been conceded by the free States in 1787 with reluctance, largely in deference to the maxim that representation and taxation should go together. It had been agreed by the Congress of the Confederation and by a majority of the States that direct taxes should be apportioned on the basis of all free and three-fifths of all other persons. But if this is as fair a rule as is practicable for apportioning taxes, it does not follow that a like rule for apportioning representation would be equally fair. The principle of the English constitution on which we had opposed England was that a colony or district is not to be taxed which is not represented, not that its number of representatives should be ascertained by its quota of taxes. This would be to establish the prin-

ciple of property qualification and representation. A man possessing twice as much property as another should pay twice as much taxes, but no man, by the American principle, should have two votes to another's one; each has but one vote in the choice of representatives. If three-fifths of the slaves are virtually represented, their owners obtain a disproportionate power in legislation and in the appointment of President of the United States. The present House, in 1819, consists of 181 members, giving one representative to every 35,000 of population. According to the last census the whole number of slaves in the United States was 1,191,000, which entitled the slave States to twenty representatives and twenty presidential electors more than they would be entitled to if the slaves were excluded. By the last census Virginia contained 582,000 free persons and 392,000 slaves. In any free State 582,000 free persons would be entitled to elect only sixteen representatives, while in Virginia 582,000 free persons, by the addition of three-fifths of the slaves, become entitled to elect, and they do elect, twenty-three representatives, being seven additional ones on account of the slaves. Thus, while 35,000 free persons are requisite to elect one representative in a free State, 25,000 may do so in Virginia; five free persons in Virginia have as much power in the choice of representatives and in the election of a president as seven free persons in any of the free States.

This inequality of power, it is true, was understood at the time of the adoption of the Constitution, but at that time no one wholly anticipated the fact that the whole of the United States revenue would be derived from indirect taxes. The free States reluctantly acquiesced in the disproportionate number of representatives thus given to the slave-holding States, the greatest concession which was made to secure the adoption of the Constitution, and which is seen to be greater now than it was thought to be then.

Great as it was, the concession was definite and it was fully comprehended. It was a settlement between the thirteen States, secured from considerations of their actual conditions and from the necessity which all felt of reforming the then Federal Government. The equality of rights, which includes an equality of burdens, is a vital principle in our theory of government and it should be jealously preserved. The departure from this principle in the disproportionate power and influence allowed to the slave-holding States was a necessary sacrifice to the establishment of the Constitution. The effect of this Constitution has been obvious in the preponderance it has given to the slave-holding States over the other States of the Union. Nevertheless, it is an ancient settlement, and faith and honor stand pledged not to disturb it. But the extension of this disproportionate power to the new States would be unjust and odious. The States whose power would be abridged, and whose burdens would be increased by the measure, can not be expected to consent to it; and we may hope that the other States are too magnanimous to insist on it.

It is clear that the importance of this aspect of the question was appreciated by southern advocates. The balance of power in the Senate seemed to them to involve their political existence.*

* Benton's Debates, Vol. VI, p. 559. (See Tucker's speech.)

We have said that King did not disregard the moral aspects of the question. It had been asserted that only domestic slaves would be taken to Missouri, and thus slavery would be "diluted." With the slaves thus dispersed their condition would be bettered, their numbers would be the same, and their health and comfort would be increased. Jefferson and Clay had both made this plea.* King, and Roberts, of Pennsylvania, both pointed out that the extension could only result in an extension of the market, an increase in the price, and an impulse to the foreign supply. The theory of "dilution" was disproved by thousands of fresh slaves who, in violation of our laws, are annually imported into Alabama, Louisiana, and Mississippi. "Renewed efforts, new laws, new penalties," said King, "will not put an end to the slave trade; so long as markets are open to the purchase of slaves, so long they will be supplied; and so long as we permit the existence of slavery in our frontier States so long slave markets will exist. The plea of humanity is not admissible. No one who has seen will ever believe that the slave is made happier by separating him from family and home and taking him to a distant State."

"Slavery," King concludes, "can not exist in Missouri without the consent of Congress. The question may therefore be considered, in certain lights, as a new one. The Territory of Missouri is beyond our ancient limits, and the inquiry whether slavery shall exist there is open to many of the arguments that might be employed had slavery never existed within the United States. It is a question of no ordinary importance. Freedom and slavery are the parties which stand this day before the Senate; and upon its decision the empire of the one or the other will be established in the new State which we are about to admit into the Union." †

PERMANENT SIGNIFICANCE OF THE STRUGGLE.

Let us now look to the significance of this struggle:

1. In the first place it should be noticed that the immediate contest was not over the question of the prohibition of slavery in the Territories. The great struggle lasted for nearly three years, but the final proposition which closed the controversy

*Jefferson's Works, Vol. VII, p. 194.

†This speech of King's is not reported in the Annals. The author furnished it from notes and memory to Niles's Register, "substantially as he made it." (See Niles, Vol. XVII, p. 215, 1819.)

and which prohibited slavery in almost all the then Federal territory was probably not debated more than three hours. It was accepted without discussion by the great bulk of the advocates of Missouri's free admission. Very few slavery extensionists questioned the right and power of Congress to prevent the spread of slavery to the Territories. That question, in the minds of those who opposed restriction in Missouri, was incidental to the question of the right of Congress to impose conditions upon a State. Incidentally the question of slavery in the Territories came up in the case of Arkansas, a country south of Missouri, in which slavery was already a fact. The restrictionists themselves recognized the fact that the plain, simple issue of limiting the area of human slavery would be strengthened by bringing it before the country unincumbered with the question of imposing conditions on a State, though most of them never wavered in their belief that conditions might be imposed. On the one hand it was only Southern zealots who denied to Congress the power to prohibit slavery in the Territories; on the other hand many in the North who opposed slavery believed that Congress might not impose conditions upon a State. In the cabinet of Monroe, in which sat Wirt, Crawford, and Calhoun, it was unanimously agreed that Congress had power to prohibit slavery in the Territories. But John Quincy Adams, also a member of that cabinet, who hated slavery with all the strength of his soul, thought it was unconstitutional to bind a State by conditions. "This is a question," he says, "between the rights of human nature and the Constitution of the United States."

Feeling the loss of support for their purpose from such views, the friends of restriction in the interest of human freedom and the "rights of human nature" made repeated attempts to present their cause unincumbered by the rights of a State. After the failure of their effort to bar slavery from Arkansas, in which the conditions were all against them, the restrictionists attempted to force to the front the pure, unincumbered issue of restriction. On December 14, 1819, very early in the session of of the Sixteenth Congress, before the Missouri bill could have come before the House for discussion, Mr. Taylor, of New York, the champion of the Restrictionists, secured the appointment of a committee to consider the expediency of restricting slavery in all Territories west of the Mississippi, and he then moved the postponement of the Missouri bill until this committee might

have an opportunity to report. It was then that Scott, the Delegate from Missouri, said that if the Missouri bill ultimately failed, the people of that Territory would form a government of their own without waiting to apply again to Congress. Taylor was disappointed in the conduct of the committee on general restriction; a majority of its members were not ready to cooperate with him for fear, it is reasonable to say, that their action would prejudice the case of Missouri. The committee was discharged at Taylor's request, who then moved, December 28, still before the Missouri bill came up in the Sixteenth Congress, that a committee be appointed with instructions to report a bill prohibiting the further admission of slaves into the Territories west of the Mississippi. This was done in order to present alone the single issue of slavery restriction and to get the question before the House in a distinct shape. Mr. Lowndes, of South Carolina, Mr. Rhea, of Tennessee, and Mr. Holmes, of Massachusetts, all of whom afterwards voted for Territorial restriction under other conditions, objected to this resolution on the ground that it was unbecoming in the House to express an opinion on a subject where views so conflicted until the question was fairly before the House; the resolution, in the view of these gentlemen, took the merits of the question for granted and would commit the House to the restrictive policy; this they were not willing to have done while the Missouri bill was pending. Their course on the policy of general restriction was determined by its bearing on Missouri's admission. Mr. Taylor then explained that he supposed a bill would be the way for the House to come at the question. In directing the committee to prepare a bill he did not intend the House to express an opinion on the principle of the bill. He presumed no member—he knew of none—doubted the constitutional power of Congress to impose such a restriction on the Territories; the only question here was one of expediency. On that question of expediency, if it had been fairly presented as Taylor desired, there would have been a difference of opinion, for the slavery question affected the interests of men; but no considerable body of opinion appeared to combat, with any approach to success, the sovereign power of the nation to control the Territories. Although it was asserted by extreme slavery advocates that the rights of property pertained to the ownership of the slave, guaranteeing its protection in the Territories equally with all other property, yet all

the burden of precedent in the Missouri struggle and its settlement favored the constitutional power of Congress to exclude slavery from the Territories. The conflict of debate was upon another question, and its settlement seemed to take this view for granted. The power of Congress over the Territories included this prohibition.

2. In the second place, the contest was entirely unexpected, without any premonition of its coming. This Mr. Blaine calls the "most remarkable fact" in all the excitement attending the question. The last real political contest in the country had been in 1812, when Madison had beaten DeWitt Clinton. Monroe had been elected both in 1816 and 1820 practically without opposition, and the Federalists in the latter year disappeared from the political arena. "The discussion of the Missouri question," says John Quincy Adams, "disclosed a secret; it revealed the basis for a new organization of parties. Here was a new party ready formed—terrible to the whole Union, but portentiously terrible to the South—threatening in its progress the emancipation of all their slaves, threatening in its immediate effect that southern domination which has swayed the Union for the last twenty years."* The unsettlement of the compromise as arranged in 1820 brought back exactly these conditions, and fulfilled the prophecy a generation later.

3. In the third place, the struggle indicated a notable change in the southern mind on the slavery question, and that a slave power was forming which would attempt to control all legislation of the federal Union affecting slavery.

"The philosophic antislavery sentiments of the Revolutionary period," says Mr. Schurz, "had disappeared, or were fast disappearing; they had ceased to have any influence upon current thought in the South." †

This change in the southern mind, both as to the moral and the economic aspect of slavery, had been brought about chiefly by the growth in the cotton plant. Eli Whitney invented the cotton gin in 1793.‡ Cotton had been exported from the United States for the first time in 1791. When Jay negotiated his treaty with England in 1795, he evidently did not know that cotton was an object of export in America. In 1800 the exporta-

* Memoirs, Vol. IV., p. 529.
† Schurz's Life of Clay, Vol. I, p. 172.
‡ *Ibid.*, p. 173.

tion of cotton from the United States was valued at $5,700,000; in 1820 the value of the cotton export was nearly $20,000,000, almost all of it the product of slave labor.* This involved an increase in the price of slaves. Dr. Von Holst pointedly reminds us that the vague dreams of emancipation in which the people of the northern slave States indulged during the early years of the Republic had a realistic basis. Slave labor was very unsatisfactory. This was certainly not so in the South after the cotton gin. The value of slaves was thus trebled in twenty years. We are reminded again of John Adams' assertion in the Revolutionary Congress, that "reason, justice, equity never had weight enough on the face of the earth to govern the councils of men; it is interest alone which does it, and it is interest alone which can be trusted." The South had begun to draw a threefold greater moneyed interest from slavery, and "under such circumstances" it is easy for men to convince themselves that an institution so conducive to their material interests is not so wicked and hurtful after all. This was what the South thought as they were reminded of the antislavery sentiments of their revolutionary father.

There was no such change of opinion, because no such relative change of conditions, in the North. There slavery had not yet become, or rather was ceasing to become, a subject of controversy. It had disappeared in their States, and they had taken it for granted that it would soon disappear everywhere. It was, therefore, "a great surprise" again to quote Mr. Schurz in his life of Clay, "to most Northern people that so natural a proposition (as the restriction of slavery in Missouri) should be resisted so fiercely on the part of the South." They were surprised at the spirit with which slavery was defended. Taylor, in the Missouri debates, referred to the authority of an honorable representative from Virginia for saying that the sixth article in the ordinance of 1787 prohibiting slavery in the Northwest was proposed by a delegate from that State. That ordinance was passed by a unanimous vote. Its enactment was then considered by all the States, slaveholding as well as nonslaveholding, not only as within the legitimate powers of Congress, but especially recommended by considerations of public policy. Was that the sentiment of 1820? Public journals had denounced the restrictive feature of the ordinance; public men in both Houses of Congress proclaimed it a

* Schurz's Clay, Vol. I, p. 173.

[illegible] emancipation; and one legislative Assembly had threatened [illegible] if Congress should apply the same principle to Missouri. No new State had been admitted to the Union since [illegible] had not established slavery by law, except those in [illegible] was prohibited by Congress. The Missouri debate [illegible] the fact that the slaveholding spirit was gaining [illegible] the Union.

4. In the fourth place, the struggle and the compromise [illegible] the first clear demarcation between the sections. From this time the equilibrium of political power was a matter of [illegible] to a section of States and to a powerful political [illegible] Mason and Dixon's line is extended toward the [illegible] now marks a political division. The slave States [illegible], and for the first time, clearly separated from the [illegible] A geographical line dividing the sections was established. The slaveholders had ceased to look to the ultimate extinction and were now looking to the perpetuation of slavery. To them the question of sectional power had become one of [illegible] importance, and to that end came the necessity for more slave States. Here they first came to believe that the issue in this struggle for more slave States involved their political destiny and identity. This is the true significance of the Missouri question. It was this aspect of the question which gave Mr. Jefferson alarm, and which caused him to say that the trouble sounded "like an alarm bell rung at midnight." He wrote to a member of Congress at the time: "The Missouri question is the most portentous one which has ever threatened the Union. In the gloomiest hour of the Revolutionary war I never had any apprehensions equal to those which I feel from this source."

5. In the fifth place, and as a corollary of this, it became evident in this discussion that whenever slavery came to be the dominant issue in American politics, or when its interests should be seriously threatened by national action, the slave States would solidify in its defense. Even then Southerners had arrived at the blind and fatal conclusion that a struggle for slavery meant a struggle "for their political existence."* For the first time the "South" comes to be identified with slavery. Their public men had not yet come to defend the institution as a "positive good;" public opinion seemed yet to

*Tucker, of Virginia; Debates of Congress.

allow the concession from their advocates in Congress that slavery was a great evil to be deplored. As we have seen, Clay apologized for consenting to its continuance in Missouri by calling extension "diffusion," and upon the weak plea that thus the evil would be diluted and the oppression and wrong to other slaves alleviated. But at this time was first clearly marked the habit which prevailed subsequently for forty years, that whenever an attack was made in Congressional halls against slavery, or any part of the slave system, or an assertion of the right of the black man to life and liberty, every such utterance was resented by Southern men as an attack upon the "South." It here appeared that slavery was to be defended by the rights of States and the rights of property. The equilibrium of political power for the South meant equilibrium for slavery; equal rights in the Territories for the South meant equal rights for slavery. Unfortunately for that great people and the interests of mankind the interests of human slavery now first confronted the nation with a solid South.

6. In the sixth place, besides the fact that a precedent was set in favor of the right of Congress to restrict slavery in the Territories, the burden of argument proved the right of Congress, if proof were needed, to impose conditions upon a State. No one now, so far as we know, questions that right. The extent to which it is now exercised by the General Government is very much greater than was dreamed of by the Federal legislators in the early days of the Republic. The earliest enabling acts, those admitting Kentucky and Vermont, simply consented to the admission of the new States. These lands never belonged to the Union as Territories. Now, in the admission of a State we have an elaborate law undertaking to limit the power of the people over their State constitution. These restraining acts were originally confined to provisions setting aside lands and townships for schools, universities, and roads; but recently an enabling act went so far as to deny the franchise to all people who profess the Mormon faith. While these laws can not be binding upon the people of the States, and can not prevent their amendment of their constitution in direct contravention of the enabling acts, they indicate a general acceptance of the idea, an understanding that the General Government, or the nation, has the right to insist that a Territory seeking statehood shall possess certain qualifications and make certain pledges before it can be admitted to become a member

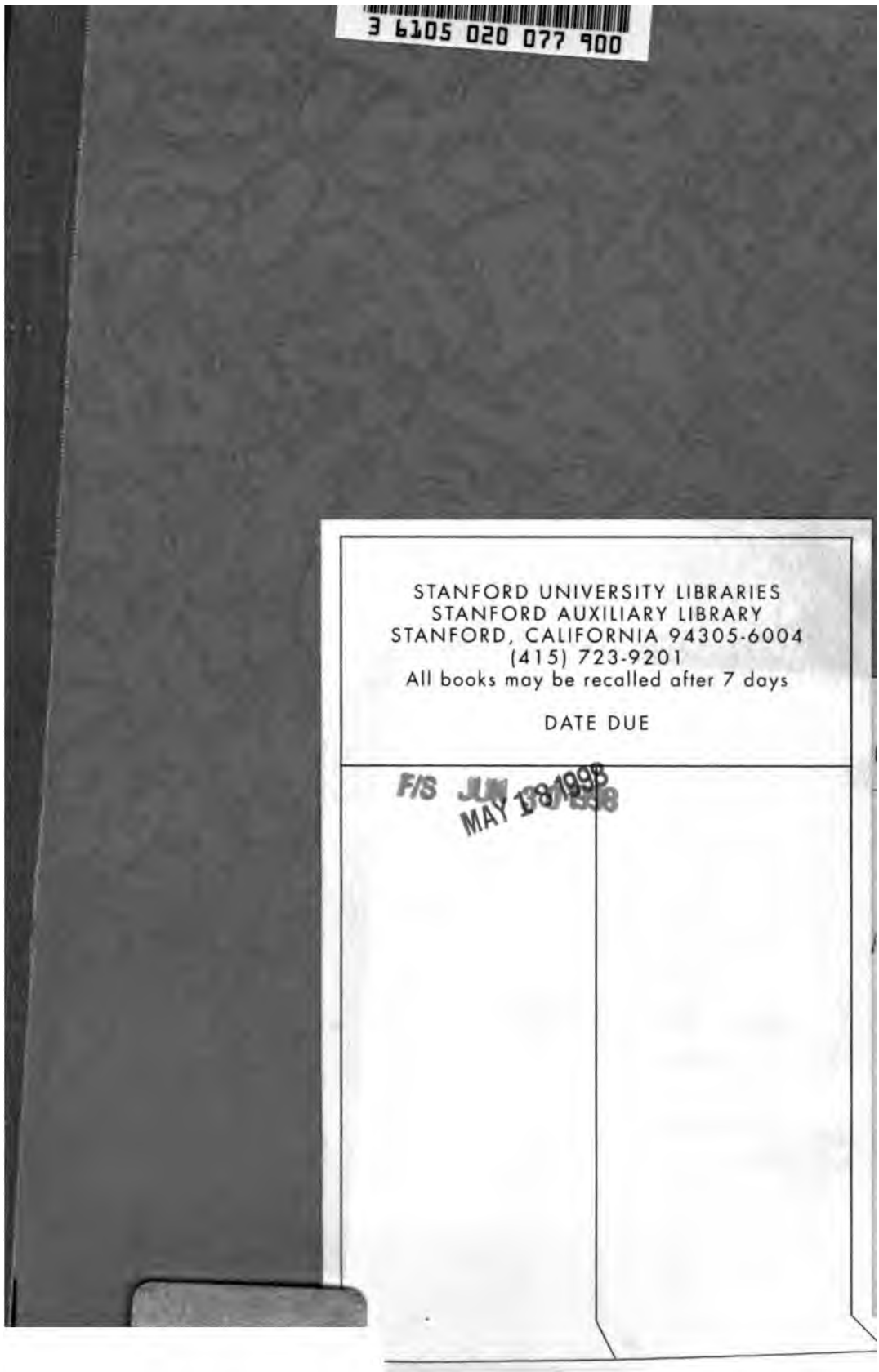
of the Union. And there is no doubt that a very large number of the people would consider the subsequent adoption of a constitutional amendment opposed to the provisions of the enabling act as a breach of faith. Such an act might be set aside by the national judiciary. Subsequent history has vindicated those in 1820 who insisted on the right to impose conditions on an incoming State.

7. Lastly, in this controversy we stand at the threshold of the struggle that produced the civil war. Here the issues were defined. It was here the nation first definitely met the crisis. John Quincy Adams recognized with prophetic wisdom the importance of that crisis. "Never since human sentiments and human conduct were influenced by human speech," says he, "was there a theme for eloquence like the free side of this question now before the Congress of the United States. Time can only show whether the contest may ever be with equal advantage renewed." Time, alas, showed that an equal advantage for the cause of free soil never came again. In the beginning of the spread of an evil is the time to resist it. Statesmanship and foresight were not then wanting, but their warnings were unheeded, their counsels were not dominant. *If*, if only the policy of the restrictionists had then been adopted, if this policy had been established never again to be brought into question, an historic imagination may lead us to assert that the long years of painful controversy might have been escaped, the four years of disunion and civil strife might have been avoided. In that case, as far as human insight can discover, freedom would have become national and slavery would have been easily confined to local limits. The contest did not concern Missouri alone. Two principles were at stake, the principle of free labor and nationality. "At the last moment," says Von Holst, in the night between March 2 and 3, 1820, "free labor and nationality yielded to slavery and State soveignty." How important, then, it was to have done what Lincoln said thirty-eight years later must be done for the salvation of the Republic, "to arrest the further spread of slavery and to place it where the public mind shall rest in the belief that it is in the course of ultimate extinction." "A house divided against itself can not stand." Our National House was now for the first time clearly divided against itself. In the Missouri struggle the issue was definitely made up which afterward passed beyond the era of compromise, and the South

came to the defense of slavery as an institution on which she staked her hopes of prosperity and power. Tallmadge, who offered the restrictive amendment, recognized the nature of the conflict. He believed that the nation was standing in the nick of time; that if the evil of slavery was ever to be arrested then was the time to arrest it. He said:

> Has it already come to this: That in the Congress of the United States—that in the legislative councils of the American Republic the subject of slavery has become the subject of so much feeling, of such delicacy, of such danger, that it can not safely be discussed? Are members who express their sentiments upon this subject to be accused of talking to the gallaries with intent to excite a servile war, and of meriting the fate of Arbuthnot and Ambrister? Are we to be told of the dissolution of the Union, of civil war, and of seas of blood? And yet, with such awful threatenings before us do gentlemen in the same breath insist upon the encouragement of this evil, upon the extension of this monstrous scourge of the human race? An evil so fraught with such dire calamities to us as individuals and to our nation, and threatening in its progress to overwhelm the civil and religious institutions of the country, with the liberties of the nation, ought at once to be met and to be controlled. If its power, its influence, and its impending dangers have already arrived at such a point that it is not safe to discuss it upon this floor, and it cannot be considered as a proper subject for general legislation, what will be the result when it is spread through your widely extended domain? Its present threatening aspect, and the violence of its supporters, so far from inducing me to yield to its progress, prompt me to resist its march. *Now is the time.* It must *now* be met, and the extension of the evil must *now* be prevented, or the occasion is irrevocably lost and the evil can never be controlled.

When we come to view the repeal of the Missouri compromise in 1854, to find new lands for slavery, we appreciate the force of these words of the early restrictionist.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